

CHRISTOPHER J. CHRISTIE
United States Attorney
SUSAN C. CASSELL
Assistant U.S. Attorney
970 Broad Street, Suite 700
Newark, NJ 07102
Tel. (973) 645-2844
Fax. (973) 297 2010
email: susan.cassell@usdoj.gov
SCC8081

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FEDERAL AVIATION
ADMINISTRATION,

Petitioner,

v.

PLATINUM JET MANAGEMENT,

Respondent.

HON.

Civil Action No.

PETITION AND APPLICATION FOR AN
ORDER TO SHOW CAUSE

Petitioner, Federal Aviation Administration, by its attorney, Christopher J. Christie, United States Attorney for the District of New Jersey, for their Petition and Application for an Order to Show Cause to enforce administrative subpoena, say:

1. This is an action to enforce compliance with the issuance of administrative subpoena, in accordance with the provisions of 49 U.S.C. section 46104.
2. This Court has jurisdiction pursuant to the provisions of 49 U.S.C. section 46104.
3. Petitioner, Federal Aviation Administration, is charged with the statutory responsibility to conduct investigations relating to the flight safety, including but

3. Petitioner, Federal Aviation Administration, is charged with the statutory responsibility to conduct investigations relating to the flight safety, including but not limited to seeking information to protect the public from illegal and unsafe flight operations. The Petitioner is authorized to issue subpoenas for the production of all information, documents, reports, answers, records, accounts, papers and other data and documentary evidence relating to flight operations.

4. Respondent, Platinum Jet Management, located at 1621 South Perimeter Road, Fort Lauderdale, Florida, is an aircraft operator.

5. On February 2, 2005, a CL 600 aircraft, identification number N370V, crashed during takeoff on a flight from Teterboro Airport to Chicago Midway Airport, causing personal injuries, damaging the aircraft, adjacent buildings and other property. The flight was being operated by a flight crew employed by Platinum Jet Management, pursuant to an agreement between Platinum Jet Management and Darby Aviation, d/b/a Alphajet. The preliminary investigation undertaken by the Teterboro Flight Standards District Office indicates because the flight was carrying passengers for compensation and hire, the flight was covered by Part 135 of the Federal Aviation Regulations (FAR 135), 14 C.F.R. Part 135 and the requirements under that Part. Platinum Jet Management does not hold a Part 135 air carrier certificate, and is not authorized to conduct operations under that Part. Darby Aviation does hold a Part 135 air carrier certificate. The preliminary investigation further indicates that Platinum Jet may not have been operating in accordance with law, and that among other things, the flight crew

involved in the accident may not have been qualified to operate in the manner set forth above.

6. As set forth in the Declaration of Alfred R. Johnson, Jr., Deputy Regional Counsel, FAA, attached hereto as Exhibit B, the Federal Aviation Administration is charged by law with the responsibility for safeguarding the flying public, and the records requested by the subpoena, Exhibit A, are indispensable to the proper conduct and completion of the FAA's legitimate enforcement inquiry.

7. As part of an official FAA investigation, on February 16, 2005, the Office of Regional Counsel, Eastern Region, of the FAA, issued and served an administrative subpoena upon Platinum Jet Management, at its office in Fort Lauderdale, Florida, requiring the requested books and records in Attachment 1 be produced on or before February 23, 2005.

8. Platinum Jet Management requested that the date for production be extended until February 24, 2005, and on that date Platinum Jet Management produced certain of the requested records, but declined to produce other records, including the documents requested in Attachment 1 to Exhibit A, (f) "pay records, flight and duty time records, and/or training records for pilots employed or paid by Platinum Jet Management, including but not limited to records for John Kimberling, Carlos Salaverria, Francis Vieira, Henry Hunley, Angela Gomez, and Sarah Olenechuk;" and (g) "pay records, duty time records, and/or training records for mechanics employed or paid by Platinum Jet Management."

9. As of the present, Platinum Jet Management has not complied with the administrative subpoena. Rather, Platinum Jet Management has responded that

(1) there is no requirement that they maintain such records; (2) that the records may be maintained by Alpha Jet International; and (3) that release of these records would be an unwarranted invasion of personal privacy of the persons involved; and (4) that the aircrew and mechanics were independent contractors, and therefore information on these individuals was not covered by the subpoena. See Declaration of Alfred R. Johnson, Jr., ¶ 22-25.

10. Whether or not there is a statutory obligation to maintain such records, if such records are in the possession of Platinum Jet Management, they are required to produce them in response to this subpoena.

11. In the event that these records do not now exist, Platinum Jet Management is required to produce a Declaration attesting to that fact. Moreover, in the event that these records did exist, but no longer exist, or in the event that they exist but they are no longer maintained by Platinum Jet Management, Platinum Jet Management should to attest to the facts surrounding their current location.

12. Respondent's may not claim that the response to the subpoena is an unwarranted invasion into the personal privacy of the person whose records are sought. Respondent appears to be tracking the language of the Privacy Act, 5 U.S.C. 552a, which applies solely to the release of documents by the federal government. A private person of entity has no obligation of non-disclosure in response to an administrative law enforcement subpoena.

13. Pursuant to 49 U.S.C. § 461004 (b), a judicial proceeding to enforce a subpoena may be brought in the jurisdiction in which the proceeding or investigation is conducted. The FAA investigation in this case is being conducted

by the Teterboro Flight Standards District Office, located in Teterboro, New Jersey, and is within the district of New Jersey.

WHEREFORE, Petitioner respectfully prays:

1. that the Court issue an Order directing respondent to show cause why it should not be compelled to comply with the said administrative subpoena in its entirety and forthwith;

2. that the Court enter an Order directing the respondent to obey the subpoena by ordering Platinum Jet Management to obey the subpoena and to produce the documents in response to the subpoena at a date, time, and place specified by the Court;

3. that any Order granting the relief sought herein be served by a duly authorized agent of FAA;

4. that the Court Order the United States recover its costs in maintaining this action; and

5. that the Court grant such other and further relief as it deems just and proper.

CHRISTOPHER J CHRISTIE
United States Attorney

By:

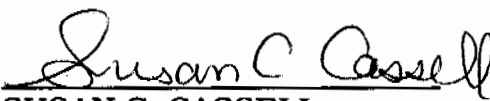

SUSAN C. CASSELL
Asst. U.S. Attorney

EXHIBIT A



U.S. Department
of Transportation

Federal Aviation
Administration

Eastern Region
Office of Regional Counsel

①
DMC
1 Aviation Plaza
Room 561
Jamaica, NY 11434
Telephone: 718-553-3270
Facsimile: 718-995-5899

FEB 16 2005

FEDERAL EXPRESS MAIL

Custodian of Records
Platinum Jet Management
1621 S. Perimeter Road
Fort Lauderdale, Florida 33309

Re: In the Matter of Platinum Jet Management Aircraft Operations

Dear Sir or Madam:

Enclosed please find a subpoena with regard to the above-referenced matter. Please be advised that no personal appearance is necessary if the requested information is provided prior to the return date of this subpoena. If you have any questions, please do not hesitate to contact me at (718) 553-3270.

Sincerely,

Loretta E. Alkalay
Regional Counsel

By:

David M. Cohen
David M. Cohen
Attorney

Enclosure

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

SUBPOENA

Custodian of Records
Platinum Jet Management

To _____

1621 S. Perimeter Road

Fort Lauderdale, FL 33309

At the instance of the Federal Aviation Administration

you are hereby required to appear before Loretta E. Alkalay, Regional Counsel
or her designee

of the Federal Aviation Administration, at Office of the Regional Counsel, Federal
Aviation Administration, Eastern Region, Room 561

1 Aviation Plaza, Jamaica, NY 11434

in the city of New York, New York

on the 23rd day of February, XX 2005, at 1 o'clock P. M. o
that day, to testify in the Matter of Platinum Jet Management Aircraft Operations

And you are hereby required to bring with you and produce at said time and place the following
books, papers, documents, and records:

See Attachment 1

Fail not at your peril.

IN TESTIMONY WHEREOF, the undersigned, an officer designated by the
Administrator of the Federal Aviation Administration, has hereunto set his

hand at Jamaica, New York

this 16th day of February, XX 2005

Loretta E. Alkalay
Loretta E. Alkalay, Regional Counsel

ATTACHMENT 1

For the period of time from February 1, 2002 to the date this subpoena is returnable, provide the following:

1. Any and all records, leases, agreements, or documents relating to or regarding operation of aircraft by or on behalf of Platinum Jet Management including but not limited to any:
 - a) aircraft lease agreements entered into by Platinum Jet Management;
 - b) aircraft charter management agreements entered into by Platinum Jet Management;
 - c) aircraft charter broker agreements entered into by Platinum Jet Management;
 - d) advertising agreements created in furtherance of any aircraft operations;
 - e) copies of advertisements paid for and/or created by Platinum Jet Management in furtherance of any aircraft operation, including hard copies of any information posted on any website or electronic media, (at any time), that was used or created by Platinum Jet management for the purpose of advertising or supporting any operation of aircraft;
 - f) pay records, flight and duty time records, and/or training records for pilots employed or paid by Platinum Jet Management, including but not limited to records for John Kimberling, Carlos Salaverria, Francis Vieira, Henry Hunley, Angela Gomez, and Sarah Olenchuk;
 - g) pay records, duty time records, and/or training records for mechanics employed by or paid by Platinum Jet Management;
 - h) agreements with mechanics, repair stations, or any other entity for performance of maintenance on aircraft including but not limited to any records of payments made to mechanics, repair stations, or any other entity for performance of maintenance on aircraft;
 - i) aircraft flight logs for aircraft identification number N370V or any other aircraft owned, leased, or operated by or for Platinum Jet Management;
 - j) weight and balance information for aircraft identification number N370V or any other aircraft owned, leased, or operated by or for Platinum Jet Management;
 - k) document concerning any agreement for an arranged passenger flight including but not limited to any record of payment made by or to Platinum Jet Management concerning any arranged passenger flight;
 - l) documents concerning any agreement reached with Kelso & Company, Blue Star Jets LLC, Darby Aviation, Alpha Jet International, Inc., or any other air carrier, including any record of payment made to or received from any of these entities or any one else for transportation by air;

EXHIBIT B

FEDERAL AVIATION ADMINISTRATION
EASTERN REGION

DECLARATION

I, ALFRED R. JOHNSON, JR., declare as follows:

1. I am the Deputy Regional Counsel, Federal Aviation Administration, Office of Regional Counsel, Eastern Region.
2. I am an attorney duly admitted to practice law in the State of New York
3. On February 2, 2005, a CL600 aircraft, identification number N370V, crashed during takeoff on a flight from Teterboro Airport to Chicago Midway Airport, causing personal injuries, damaging the aircraft, adjacent buildings, and other property.
4. The flight was being operated by a flight crew employed by Platinum Jet Management (hereinafter "Platinum Jet") pursuant to an agreement between Platinum Jet and Darby Aviation, dba Alphajet (YDBA) (hereinafter "Darby").
5. Immediately thereafter, the FAA commenced a safety investigation of the circumstances surrounding the flight.
6. A preliminary investigation by the Federal Aviation Administration (hereinafter "FAA"), Teterboro Flight Standards District Office (hereinafter "Teterboro FSDO") shows that Kelso Investments Corporation contacted Blue Star Jets LLC, an aircraft charter broker, to arrange a Charter flight to fly eight people from Teterboro Airport to Chicago Midway Airport on February 2, 2005. Blue Star contacted Platinum Jet to arrange for the Kelso charter flight.
7. Darby is the holder of an air carrier certificate issued under Part 135 of the Federal Aviation Regulations (FAR 135), 14 C.F.R. Part 135 and is subject to the requirements under that Part.
8. Platinum Jet does not hold a Part 135 certificate and is not authorized to conduct operations under that Part.
9. The preliminary investigation by the Teterboro FSDO shows that because the flight was carrying passengers for compensation and hire, the flight was governed by Part 135 of the Federal Aviation Regulations (FAR 135), 14 C.F.R. Part 135 and the requirements under that Part.

10. The preliminary investigation by the Teterboro FSDO also shows that the flight crew employed by Platinum Jet did not meet the requirements of FAR 135 because it had not completed the required FAR 135 training.
11. A copy of an aircraft lease dated August 8, 2003 for aircraft N-370V shows that Platinum Jet leased the aircraft from 448 Alliance, LLC.
12. A copy of a Charter Management Agreement dated November 17, 2003 between Platinum Jet and Darby shows Platinum Jet as the owner of the aircraft and Darby as the exclusive agent for on-demand FAR 135 flight operations.
13. The Charter Management agreement further states that Platinum Jet is responsible for providing flight crews to Darby and for insuring that all necessary or required inspections and routine maintenance are performed on the aircraft while Darby is responsible for assuring that all crewmembers receive the proper Part 135 training.
14. Because the Teterboro FSDO could not voluntarily obtain certain records requested from Platinum Jet, on February 16, 2005, Loretta E. Alkalay, FAA Regional Counsel, Eastern Region, issued a subpoena requesting the documents. See Appendix 1.
15. Regional Counsel Alkalay issued the subpoena pursuant to 49 U.S.C. §46104. That Section authorizes the FAA to subpoena witnesses and records related to a matter involved in the hearing or investigation from any place in the United States to the designated place of the hearing or investigation.
16. The subpoena required the production of the documents requested on February 23, 2005.
17. Platinum Jet requested and obtained an extension of the time until Friday, February 24, 2005 and on that date, Platinum Jet provided a response stating that it was willing to provide certain documents in part.
18. In its response, Platinum Jet failed to provide certain information stating as follows:
 - f. Pay Records, Duty Time Records, and Training for Aircrew – Since there exists no requirement to maintain such records, [Platinum Jet] provides no records of this nature. However duty time records MAY be maintained by Alpha Jet International. – REQUEST DENIED.
 - g. Pay Records, Duty Time Records, and Training for Mechanics - Since there exists no requirement to maintain such records, [Platinum Jet] provides no

records of this nature. However duty time records MAY be maintained by Alpha Jet International. – REQUEST DENIED.

19. On February 25, 2005, I telephonically contacted Mike Moulis, Esq., counsel for Platinum Jet regarding the documents supplied pursuant to the subpoena. Randy Williams of Platinum Jet, who signed the cover letter sent with the documents submitted in response to the subpoena, also participated on this telephone call.
20. During the telephone discussion, I specifically told Mr. Moulis that I wanted to discuss his client's response to the subpoena and the documents submitted.
21. I specifically noted that some of the written responses were confusing and that Platinum did not supply all the information requested in the subpoena.
22. Specifically, we discussed the lack of response to "f" and "g" of the subpoena. The Platinum Jet representatives responded that the FAA has no statutory authority to obtain such records and release of these records would be an unwarranted invasion of privacy of the persons involved.
23. Platinum Jet further responded that the aircrew and mechanics were independent contractors and, therefore, information on these individuals is not covered by the subpoena.
24. With regards to Duty Time and Training records, Platinum Jet stated that these records might be maintained by Alpha Jet International.
25. I explained to Platinum Jet that even if records were maintained by Alpha Jet, Platinum Jet must produce any records in the possession and control of Platinum Jet that are responsive to the subpoena.
26. I also explained to Platinum Jet that even if it had no statutory or regulatory duty to maintain these records, it must produce them if the records are in its possession and control.

27. To this date Platinum Jet has failed to produce the records as requested in the subpoena and as discussed on February 25, 2005.

Alfred R. Johnson, Jr. 2/28/05
ALFRED R. JOHNSON, JR. Dated